

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENTUCKY SPEEDWAY, LLC	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Misc. No. 06-203 (KAJ)
	:	
NATIONAL ASSOCIATION FOR STOCK	:	
CAR AUTO RACING, INC., <i>et al.</i>	:	
	:	
Defendants.	:	

PLAINTIFF'S REPLY TO
NON-PARTY DOVER MOTORSPORTS, INC.'S
OPPOSITION TO TRANSFER

Kentucky Speedway, LLC (“Kentucky Speedway”) does not dispute that the D.C. Circuit in *In re Sealed Case*, 141 F.3d 337 (D.C. Cir. 1998), issued an opinion disallowing transfer. Dover Motorsports, Inc. (“Dover”) overlooks, however, two cases from other circuits specifically allowing transfers -- *In re Digital Equipment Corp.*, 949 F.2d 228, 231 (8th Cir.1991), and *Petersen v. Douglas County Bank & Trust Co.*, 940 F.2d 1389, 1390 (10th Cir.1991). *See also* Charles Alan Wright & Arthur Miller, 9A Federal Practice & Procedure § 2463 (2d ed. 1995) (“[I]t is within the discretion of the court that issued the subpoena to transfer motions involving the subpoena to the district in which the action is pending.”). In addition, *Central States v. Quickie Transport*, 174 F.R.D. 50, 51 (E.D. Pa. 1997) – from a district court in this Circuit – also allows either a transfer or remittal. (Contrary to the defendants’ suggestion, *Central States* does concern non-parties to the action.) Indeed, *Central States* distinguished *In re Sealed Case* by using the process of remittal instead of transfer.

Kentucky Speedway thinks it is preferable for both parties to litigate this issue in front of the Eastern District of Kentucky because that Court is most familiar with the facts in dispute. More than anything else, however, Kentucky Speedway wants expeditious access to the documents that Dover is withholding. Dover can consent to jurisdiction in the Eastern District of Kentucky, but has not done so. And should this Court transfer or remit the action, presumably Dover will seek mandamus, thus further delaying resolution of this issue.

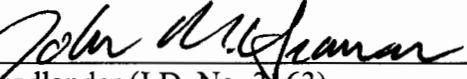
Both parties agree that this court is a proper forum, even if not a perfect one. Given Dover's objection to litigating this issue in front of the court that knows the facts best and given the remaining time left in discovery, Kentucky Speedway would rather have this Court decide the issue now than have this Court transfer or remit the motion, with an inevitable mandamus action following the decision that will cause further delay.

Respectfully submitted,

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Dated: November 7, 2006

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2006, I filed the foregoing **Reply to Dover Motorsports, Inc.'s Opposition to Transfer** with the Clerk of Court. I also caused a copy of the same to be served upon the following recipients by hand:

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In addition, I caused the foregoing document to be served on the following recipients by email and U.S. Mail:

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